Platte Valley State Bank & Trust Company

Member FDIC

April 15, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
Via e-mail at: regs.comments@federalreserve.gov
Attention: Docket Number R-1173

Dear Ms. Johnson

We appreciate the opportunity to comment on key elements as the Board and other agencies consider revising regulations surrounding the Privacy Notice required in the regulations that implement this section of the Gramm-Leech-Blilely Act.

To illustrate one key point for the Agencies to consider, I would point out that I received eight separate privacy notices at my house when our bank sent its annual notice. This is not an efficient use of resources and we urge you to make clear situations where an institution is allowed to make a consolidated notice to a household.

We ask you to consider one alternative that would save us approximately $5,000. We can accomplish this savings by making an abbreviated disclosure about our privacy practices on our statement stock. We provide sample language that is concise enough to adequately inform the consumer and allow them to request additional detail without cost. We included other issues the Agencies would need to consider and provide the statutory authority that allow the agencies to adopt such a change in the following pages.

Our Compliance Officer, Mark Thomas, played a key role in developing our comment letter. You may call him at (308) 234-7202 or e-mail him at markthomas@pvsb.com.

Sincerely,

Mark A. Sutko

Mark A. Sutko, President
Platte Valley State Bank & Trust Company
2223 Second Ave
Kearney, NE 68847

Executive Summary

- The focus of any privacy notices should remain on the protection of the consumer's non-public personal information. Congress clearly stated the goal of the privacy provisions within GLBA as protecting information. We do not believe the Agencies have statutory authority vary from this policy statement
- We believe shorter, more frequent, succinct and relevant disclosures promote consumer awareness and increases comprehension. Our letter offers an abbreviated notice method and we provide our opinion where the Agencies have the authority to adopt this procedure.
- Consumers receive a number of notices from a number of service providers. Multiple notices from a single provider do not add value to the consumer. However, it is our opinion, that current rules do not allow a consolidated notice on a household or a single notice for jointly held accounts. We ask the Agencies to clarify when an institution might combine notices to a household.
- We oppose any mandatory notice format. Each institution's situation, customer profile, marketing strategy, and privacy procedures are unique and a mandatory format eliminates flexibility where it might well be most beneficial.

So that the reader might understand the context of our comments, we begin our detailed remarks with a description of our institution and our local communities.

About Us

Platte Valley State Bank and Trust Company located in Kearney and Grand Island, Nebraska serves a two communities with approximately 30,000 residents in each city. Kearney and Grand Island, when combine with Hastings forms a triangle in Western Nebraska that is often referred to as the Tri-cities.

Kearney is vibrant and economically blessed. Our demographics show a solid mix of commerce and agriculture and blue and white-collar workers. Our community is built on four central pillars of Commerce, Health Care, Education and Government. Our community is consistently listed as one of partnerships. When one pillar of our community needs support, the other three frequently meet the challenge. Accordingly, our local economy seems to thrive, even then other surrounding communities might struggle.

Grand Island is more demographically diverse in ethnicity than Kearney. While the work force is slightly more focused on blue-collar professions (with several large manufactures in town), there is still a good blend of various skilled and educated professionals. Grand Island was recently awarded a military contract to host a National Guard Helicopter Squadron. This creates a larger military presence in the community that compliments a regaional VA long-term care facility.

Our institution has approximately 22,000 total customers in holding approximately 25,000 deposit accounts and about 11,000 loan accounts. We currently have approximately $370 million in total assets. Our deposit balances represent a market share of approximately 40% within our county. This is nearly twice the market share of our nearest competitor and the larger than the next three competitors combined. While there are not hard statistics available on loan volumes, we believe our market share is similar, although perhaps a bit lower as there is more non-bank competition for loan transactions (e.g., mortgage companies, insurance companies and personal loan companies).

We do not share non-public personal information about our customers with unaffiliated third parties. We do not share FCRA subject data with affiliates. We believe that local competitors have similar privacy policies. However, there are two large "national" competitors in our market who we believe more aggressively mine and share customer data.

Goal of a Privacy Notice

At 15 USC 6801(a), Congress specifically states the goal of the chapter of Gramm-Leech-Blilely with the following language:

> *It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information*[1]

Further, legislative history indicates Congress was concerned about the depth of information a new Financial Holding Company might host about a consumer by virtue of GLBA's repeal of Glass-Stegal statutory separations between banks, insurance companies and investment companies. We believe the issue of shopping or comparison based disclosures was raised during the development of the legislation, however, those in favor of such disclosures were not successful in their attempt. These members of Congress then pursued their desire in comment letters directed to the Agencies. We believe this is inconsistent with the final statute as adopted.[2]

In previous statutes, Congress has shown a strong ability to mandate comparison-based disclosures. We refer to three major Acts, Truth in Lending, Truth in Savings and Real Estate Settlement Practices as examples. Had Congress intended to draft a comparison based disclosure rule, we are certain that they have the ability to enact legislation to that effect.

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[1] 15 USC 6801(a)

[2] 65 FR 35161-35236, In the analysis of comments, the Agencies mention that two letters signed by several members of the House of Representatives to expand the scope of protection and notice beyond the proposed rule. However, there were also letters admonishing the Agencies to ensure that commerce was not interrupted. Clearly, Congress failed to create a consensus on this topic, so we feel it is unadvised for the Agencies to raise the issue in the context of updating the regulation.

When the Agencies developed the current regulation, they considered thousands of consumer statements. Many consumers adamantly stated they wished to avoid unwanted marketing programs. We understand their desire to avoid unwanted telemarketing calls while at the dinner table. Congress heard the concerns of their constituents and have effectively dealt undesired marketing via two separate Acts regulating telemarketers and another Act regulating marketing through e-mail. These issues should no longer be a part of GLBA information protection.

Finally, we do not believe comparison-based disclosures create consumer value. Since the implementing regulations became effective, we have not had a single consumer request privacy notices while shopping for a product or service. We do not believe consumers consider this issue when making a purchase decision.

Elements of a Privacy Notice

We believe an institution that does not share information with unaffiliated third parties can provide a meaningful disclosure with a statement as simple as:

> *We do not share information about you with unaffiliated third parties unless necessary to provide services you request, when law requires, or when law allows. You may contact us at (toll-free number) if you would like more information about our privacy practices.*

Similarly, a meaningful disclosure from an institution that shares information might be as simple as:

> *We share information about you with unaffiliated third parties. You can call (toll-free number) to request a copy of our privacy notice and/or to exercise your right to opt-out of certain information sharing.*[3]
>
> Or alternately:
> *We share information about you with unaffiliated third parties. You can request our current privacy notice by calling (toll free number). You have the right to opt-out of certain types of information sharing. To exercise this right you may call us at (toll free number).*[4]

The samples above use direct simple language and provide the consumer with succinct, relevant data.

These notices are short enough that an institution might include it on a regular statement. This could eliminate the cost of providing annual notices, which institutions pass on to consumers in higher rates, fees, charges or lower yields.

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[3] This sample is effective for institutions that would use a single toll-free number to request more information or for a consumer to exercise opt-out rights.

[4] This sample is effective for institutions that wish to have separate toll-free numbers to handle specific types of requests. An institution might use this strategy if they wished to have more skilled staff handle opt-out requests. They might prefer to have more experienced agents handle these requests to ensure accuracy, intent or perhaps convince the consumer that the contemplated sharing might benefit the consumer.

This practice provides notice to a consumer that is more frequent than currently required.

We believe first example, where an institution does not share information with unaffiliated third parties, adequately meets the requirements at 15 USC 6803.

Some might argue the abbreviated disclosure for institutions that share information does not meet this requirement. Our opinion is that adopting an exception is allowed 15 USC 6804(b):

> *(b) Authority to grant exceptions*
>
> > *The regulations prescribed under subsection (a) of this section may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.*[5]

Further, we believe an exception, allowing frequent, but abbreviated notice, is consistent with the sub-chapter and that the Agencies are empowered to allow disclosures "in other form as provided in regulation."[6] We believe that a frequent abbreviated notice, allowing a consumer to obtain, without cost, long-form disclosures, is a "form" allowed by statute.

If the Agencies adopt an exception, we believe the following issues bear consideration:

- An institution changes from a position from not sharing to sharing information. Perhaps they should make at least one long-form disclosure to adequately inform the consumers about the new policy and draw attention to the change.
- Regulations should specify the requirement of a toll-free number so that consumers requesting detailed information do not incur any costs. Further, those institutions that share information should be required to home telephonic requests to opt-out of information sharing. This is necessary so that consumer's can exercise their opt-out rights easily and immediately, much as the current regulation encourages.
- Allow institutions to choose between long-form and abbreviated disclosure methods, much like the error resolution notices within Regulation E. Some institutions might believe an annual long-form notice is more desirable and more effective, so we do not advocate a mandatory abbreviated notice.
- Should institutions using abbreviated disclosures be required to provide notice more frequently, such as with each regular statement delivered to the consumer?

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[5] 15 USC 6804(b).
[6] 15 USC 6803(a).

Language of a Privacy Notice
We encourage the Agencies, through commentary, or appendices, to provide examples including sample language. Such commentary, appendices and sample language help us understand intent of the Agencies. However, the Agencies should refrain from any mandatory language.

It is not reasonable that the Agencies, or any party, can anticipate the future sufficiently to craft mandatory language. Nor can they anticipate every fact situation.

Codifying language also creates the situation where rapid market changes outpace the Agencies ability to modify the language. RESPA is a good example for this point. The market changes surrounding how consumers shop for mortgages, terms available, technology, etc. have changed much faster than HUD's ability to redraft disclosures most appropriate to consumers. The current result is a regulation where consumers receive so much paper, that the original intent to draw attention to fees, costs, and the like, is no longer met. We fear this would happen here as well. It is likely that a technically correct disclosure using required language might not accurately reflect an institution's actual practices.

Finally, another complication arises when the Agencies must consider the variety of state and local statutes that apply to this particular issue. GLBA contains no pre-emption, if the state or local rule is *more restrictive* than GLBA's privacy protection. We do not believe that a constant dedication of staff necessary to react to future changes in statute, technology or industry practices is the most effective use of limited human resources.

Form of a Privacy Notice
The Agencies should not create a mandatory graphic format.

We believe that an average consumer might well see 10 or more notices every year.[7] 12 months will be desensitized to the content of specific disclosures is they are identical in size, format and content.

We will not restate arguments above, but simply point out that most are relevant to this topic as well.

[7] While ten notices might seem extreme, consider that an average consumer gets notices from: Insurance companies, credit card companies, banks, third-party bill payers, mortgage companies, software companies, etc. If a person has four credit cards, a bank, a mortgage, uses software to manage their checkbook, uses other software to calculate tax liability, uses electronic bill payment services, and one insurance company they would receive the ten notices. This does not consider notices from investment brokers, etc. so an estimate of ten may well be a conservative estimate.

We also provided model language and suggested changes that might were relevant in more than one area. We reference them here rather than restate them in the interest of efficiency.

Mandatory or Permissible Aspects of a Privacy Notice

We have been resolute in stating our belief that the Agencies should craft sample language to illustrate regulatory requirements. However, we do not advocate the codification of any mandatory language or graphics. Our rationale for this statement is evident in the topics above.

Other questions raised, such as institutions that include opt-out services that are not mandatory by federal or state statutes, are moot if you allow institutions to craft disclosures relevant for their own fact situation. Flexibility from the Agencies eliminates the need to address those questions.

Costs and Benefits of a Short Notice

As we state in our cover letter, we spend approximately $5,000 to develop and deliver annual notices to our customers. If we could include a short notice on documents delivered to customers in the normal course of business, such as statements, we believe we could eliminate most of this expense.

If we must to provide a new disclosures such as those suggested by the Agencies in their request for comment, we believe our cost to produce and deliver these notices would increase by about $2,000, or 40% above our current expenditures. The bulk of the expense is a move from a statement combined with a cover letter that currently uses a single sheet of paper to a format that would require, at least in our business model, at least two sheets of paper. The remainder of that expense, and the portion we could not accurately estimate, is the cost of retraining staff, re-educating consumers who are already used to our standard notice, and retool our delivery system to ensure we would capture future regulatory changes in format or content.

We wish to highlight that two of the Agencies proposed *short-form* disclosures are actually longer than our current notice.

This concludes our comments.